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FISCAL IMPACT STATEMENT

LS 6715 **NOTE PREPARED:** Jan 7, 2006
BILL NUMBER: HB 1285 **BILL AMENDED:**

SUBJECT: Alternative Fuel Use and Production.

FIRST AUTHOR: Rep. Heim **BILL STATUS:** As Introduced
FIRST SPONSOR:

FUNDS AFFECTED: X GENERAL **IMPACT:** State & Local
X DEDICATED
FEDERAL

Summary of Legislation: The bill increases the maximum amount of credits that may be granted for biodiesel production, biodiesel blending, and ethanol production. It extends the tax credit for the retail sale of blended biodiesel to 2010. It also provides, subject to certain restrictions, a credit against Adjusted Gross Income Tax liability for, qualified expenditure made to place: (1) a renewable fuel compatible fueling station in service in a retail outlet; or (2) an organic waste biomass conversion unit in service.

Effective Date: Upon passage; January 1, 2005 (retroactive); January 1, 2006 (retroactive).

Explanation of State Expenditures: *Department of State Revenue (DOR):* The Department of State Revenue would incur some administrative expenses relating to the revision of tax forms, instructions, and computer programs to incorporate the new tax credits proposed in this bill. The DOR also is required to collect recapture taxes from taxpayers receiving refueling station investment credits who convert the property to other uses within three years of receiving the credits. The DOR's current level of resources should be sufficient to implement these administrative tasks.

Indiana Economic Development Corporation (IEDC): The bill requires the IEDC to administer new tax credit programs for investment in fueling station property for use in storing or dispensing B20 biodiesel fuel or E85 base fuel; and for investment in organic biomass waste conversion units. The IEDC's current level of resources should be sufficient to fulfill these administrative tasks. The December 5, 2005, state staffing table indicates that the IEDC had 39 vacant full-time positions, including one regional office position.

Explanation of State Revenues: *Organic Methane Fuels Credit:* The bill establishes a nonrefundable credit against the Adjusted Gross Income (AGI) Tax for taxpayers that make qualified investment in "organic biomass waste conversion units" that occurs after December 31, 2006. The IEDC would approve and allocate credit amounts to taxpayers making qualified investment. The bill places an aggregate limit of $5 M on the aggregate amount of credits that may be allocated by the IEDC. Within this limit, the amount of credits that might be allocated by the IEDC is indeterminable. Depending upon the timing of future investment decisions and credit allocations by the IEDC, the fiscal impact of the credit likely would not begin before FY 2008.

Biodiesel/Ethanol Tax Credits: The bill makes changes to existing tax credits for production of ethanol, biodiesel, and blended biodiesel, and for retail sales of blended biodiesel. The changes are as follows:

(1) The bill increases the aggregate credit limit from $20 M to $50 M for the ethanol production, biodiesel production, and blended biodiesel production credits. The new aggregate limit would apply to all credits provided after December 31, 2004. The amount of additional credits that may be claimed due to the new credit limit is indeterminable and depends on IEDC certification of companies for the production credits. The IEDC certified $12 M in ethanol production credits in 2005 for four companies, with each company receiving $3 M in credits. No more ethanol production credits may be certified under current statute. With the new credit limit, the IEDC could increase credits to the companies already certified by $2 M each (a total of $8 M in additional credits). The IEDC has not certified any credits for biodiesel or blended biodiesel production.

(2) The bill moves the sunset date for the blended biodiesel retail sales credit from December 31, 2006, to December 31, 2010. The credits that might be claimed due to extending the time frame of the credit is indeterminable and depends on IEDC certification of sales credits. In 2005, the IEDC did not certify any credits for the retail sale of blended biodiesel.

Fueling Station Investment Credits: The bill establishes separate nonrefundable Adjusted Gross Income (AGI) Tax credits for qualified investment in depreciable fueling station property in Indiana (other than a building or its structural components) that is used for storage or dispensing into motor vehicles of B20 blended biodiesel or E85 base fuel. The tax credit is effective for purchase, delivery, installation, and refitting expenses incurred after June 30, 2006, and before January 1, 2011. Fueling station property also must be placed in service prior to January 1, 2011, to qualify for the credit. Under the bill, the IEDC administers the credit programs and awards the credits. The bill also provides for a clawback of the tax credit if the creditable fueling station property is converted to another use. While the amount of fueling station investment credits that may be awarded is indeterminable, the bill limits to $10 M the total amount that may be awarded under both credits for all taxpayers and all taxable years.

Background - Organic Methane Fuels Credits: The nonrefundable credit is equal to the lesser of: (1) the qualified investment; (2) $1 M for all qualified investments made by all taxpayers in all taxable years at a single location; or (3) the amount granted by the IEDC. "Qualified investment" refers to ordinary and usual expenses incurred after June 30, 2006, relating to the purchase, delivery, or installation of an organic biomass waste conversion unit. The tax credit is nonrefundable, and unused credit amounts may not be carried back. However, a taxpayer may carry forward any unused credit amount for up to five taxable years after the year in which the tax credit is accrued. For pass through entities, the credit may be claimed by shareholders, partners, or members in proportion to their distributive income from the pass through entity. The bill places a $5 M aggregate limit on the amount of credits the IEDC can award for qualified investment in organic biomass waste conversion units. The credit must be disallowed if the creditable investment within the first 36 months after it is placed in service is used for any purpose other than to produce gas or electricity from agricultural livestock waste nutrients.

Revenue from the AGI Tax on corporations is distributed to the state General Fund. Eighty-six percent of the revenue from the AGI Tax on individuals is deposited in the state General Fund, and 14% of the revenue is deposited in the Property Tax Replacement Fund. While the tax credit is effective beginning in tax year 2006, the fiscal impact may not commence before FY 2007 as the IEDC will have to review credit applications and then allocate credits.

An "organic waste biomass conversion unit" is tangible property that is directly used to produce gas or electricity from agricultural livestock waste nutrients for consumption at the location where the gas or electricity is produced or for sale. An organic waste biomass conversion unit includes metering devices, relays, locks and seals, breakers, automatic synchronizers, and other control and protective apparatus designated for safe, efficient, and reliable interconnection to an electric utility's system. However, an organic waste biomass conversion unit does not include tangible property that uses fossil fuel that exceeds the minimum amount of fossil fuel required for any necessary startup and flame stabilization or municipal solid waste.

Biodiesel/Ethanol Tax Credits: Current statute provides credits against a taxpayer's Sales and Use Tax, AGI Tax, Financial Institutions Tax, or Insurance Premiums Tax liability for the production of biodiesel, blended biodiesel, and ethanol, and for the retail sale of blended biodiesel. The tax credits are: (1) $1.00 for each gallon of biodiesel manufactured in Indiana and used to produce blended biodiesel; (2) $0.02 per gallon of blended biodiesel produced in Indiana using biodiesel produced in Indiana; (3) $0.125 per gallon of ethanol produced at an eligible facility in Indiana; and (4) $0.01 per gallon of blended biodiesel sold by Indiana retailers.

Current statute limits the ethanol, biodiesel, and blended biodiesel production credits combined to $20 M for all taxpayers and all taxable years. Within this overall limit, the credits certified by the IEDC must total at least $4 M for each credit. Thus, no new credits for ethanol production can be approved under the current limits, as the IEDC certified $12 M in ethanol production credits in 2005 ($3 M each to four companies). In addition, the taxpayer limit for each credit is $3 M, with provision for the IEDC to increase this limit to $5 M for the ethanol production credit or the biodiesel production credit.

The Alternative Fuels Association (AFA) reports that one ethanol production facility currently operates in Indiana with a capacity of 102 million gallons per year. The AFA also reports that two facilities are currently under construction in Indiana, each with a 40 million gallon annual capacity. The National Biodiesel Board (NBB) reports that there are currently 45 active biodiesel production plants operating in the U.S. and 53 additional production plants proposed, including two in Indiana. The NBB reports that dedicated biodiesel plants in the U.S. have a total capacity of 60 to 80 million gallons per year, and that an additional 200 million gallons of capacity are available from non-dedicated facilities operated by oleochemical producers. The NBB also reports that a total of 59 biodiesel retailers and 41 biodiesel distributors currently operate in Indiana.

Fueling Station Investment Credits: The credit is equal to the lesser of: (1) the qualified investment; (2) $50,000 for all qualified new investment in B20 or E85 fueling station property by all taxpayers in all taxable years at a single location; (3) $10,000 for all qualified conversion investments in B20 or E85 fueling station property by all taxpayers in all taxable years at a single location; (4) $5,000 for all qualified new investment by all taxpayers in all taxable years for any single fueling station at a single location; (5) $2,000 for all qualified conversion investment by all taxpayers in all taxable years for any single fueling station at a single location; or (6) the credit amount awarded by the IEDC. (Conversion investment is expenses relating to retrofitting an existing fueling station.) The credit may be claimed only in the taxable year in which the fueling station property is placed in service. E85 fuel contains 85% ethanol and 15% gasoline, while B20 contains 20% biodiesel and 80% petroleum diesel. The bill requires that fueling stations eligible for the investment credit must have common access to a public highway. The fueling stations must dispense the fuel directly into the tank of a motor vehicle propelled by the fuel. The motor vehicle must have at least four wheels and be manufactured primarily for use on public streets, roads, and highways.

The bill requires a credit recipient to pay a recapture tax to the Department of State Revenue if the fueling station property that is the basis for the credit is converted to another use within three years of the taxable year the property was placed in service. The recapture tax is equal to 75% of the credit if the conversion takes place within one year of the tax year the property was placed in service; 50% of the credit if conversion takes place within two years; and 25% if the conversion takes place within three years.

Explanation of Local Expenditures:

Explanation of Local Revenues:

State Agencies Affected: Department of State Revenue; Indiana Economic Development Corporation.

Local Agencies Affected:

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